

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

THE STATE EMPLOYEES' ASSOCIATION :
OF NEW HAMPSHIRE, INC. :
:
Complainant :
:
and :
:
COUNTY COMMISSIONERS, BELKNAP :
COUNTY, NEW HAMPSHIRE :
:
Respondent :
:

CASE NO. S-0341

DECISION NO. 79005

APPEARANCES

Representing the State Employees' Association:

Richard E. Molan, Asst. Executive Director

Representing the Belknap County Commissioners:

Roger Burlingame, Esquire, Counsel

BACKGROUND

On September 14, 1978 the SEA by its Assistant Executive Director complained of unfair labor practices against the Belknap County Commissioners alleging that negotiations had commenced between the parties on or about July 28, 1978 and that during that time proposals had been made in writing with respect to certain subjects; namely, promotion, transfer, seniority, discipline and involuntary separation. At a meeting on September 8, 1978 the representative for the County Commissioners refused to negotiate such subjects, and said refusal in the eyes of the complainant constituted unfair labor practice under RSA 273-A:5 I(e) and RSA 273-A:3.

Hearing on the charges was conducted in the PELRB offices on November 21, 1978. SEA by its representative Molan who argued that these matters were clearly the subject of negotiations under the law; that the County had no uniform merit system as in the case of state employees; that a quick survey of numerous contracts throughout the state found these items in negotiated contracts; and lastly, that none of the proposals went to the "why" of lay-offs etc. and did not try to regulate or place inhibitions on the lay-off of employees.

The County Commissioners by their representative Atty. Burlingame cited the elusive definition of employment as the key to managerial prerogative specifically referred to in RSA 273-A:1, XII and further referenced a finding of this Board in the case of SEA v. N. H. PELRB, February, 1977, which dealt with a similar situation. Attorney Burlingame cited certain RSA's dealing with the appointment of Deputy Sheriff. 104:3 & 3(e) - 104:27 and 28:10 dealing with all County Employees covering grounds and procedures for discharge etc.

During the hearing, Attorney Burlingame agreed that seniority was a subject of negotiations thereby removing this subject from Board's consideration.

Upon conclusion of the hearing both parties were requested to attempt a mutual solution to their problems in light of previous orders of this Board and the Supreme Court case SEA v. State of N. H., PELRB, No. 7836 dealing with negotiable subjects. Both parties were given until December 8th to file post-hearing memoranda.

The SEA memorandum pointed out certain analyses of several N. H. cases as well as certain other pertinent NLRB cases and dealt specifically with the existing statute covering testimony referenced county employees.

The County memorandum referred to the statement of policy contained in RSA 273-A by indicating a division of the policy into two thrusts "to foster harmonious and cooperative relations", and "to protect the public by encouraging orderly and uninterrupted operations of government," further, that the Legislature did not give any indication that public employees should become parties in the determination of harmonious and cooperative labor relations, and other Board orders and court decisions with more specific reference to these statutes dealing with county employees.

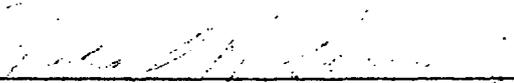
After considering the oral testimony and review of memoranda the Board makes the following findings:

FINDINGS

1. RSA 273-A does in fact confer upon the public employee the right to negotiate the terms and conditions of employment. The mere fact that items are the proper subject of negotiations does not require the surrendering of managerial rights by the public employer.
2. Conditions of employment are subjects which a public employee does have a fundamental interest.
3. RSA 273-A is a legislative mandate in the public sector and must be interpreted along with other statutes dealing with the public employees, as in the case of SEA v. N. H. Negotiating Committee.
4. Certain mutual agreements have been reached by the parties regarding negotiable subjects.
5. The subjects of promotion, transfer, lay-off, seniority, discipline and involuntary separation are properly the subjects of negotiations between the parties. By this finding and declaration the Board does not imply that the public employer must surrender his managerial rights finally conveyed to him under the statute.

ORDER

- A. The failure on the part of the Belknap County Commissioners to negotiate these subjects constitutes an unfair labor practice.
- B. The Belknap County Commissioners and the SEA are ordered to conduct good faith negotiations involving these subjects.



RICHARD H. CUMMINGS, ACTING CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 21st day of March, 1979

By unanimous vote: Acting Chairman, Cummings presiding. Members voting, James C. Anderson and Joseph B. Moriarty. Also present Board Clerk Evelyn LeBrun.